

## TEACHERS' RETIREMENT BOARD

### INVESTMENT COMMITTEE

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SUBJECT: Real Estate – Discussion of Responsible Contractor Policy      ITEM NUMBER: 9

ATTACHMENT(S): 3

ACTION: \_\_\_\_\_

DATE OF MEETING: May 1, 2002

INFORMATION: X

PRESENTER(S): Mike DiRé and Greg Nyland

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#### Executive Summary

As part of the Investment Staff Annual Business Plan for 2001/2002, the real estate staff was asked to review Responsible Contracting policies for potential inclusion in our real estate program. This report fulfills that objective.

#### Background

Staff has researched the brief history of Responsible Contracting policies as they have been enacted at various pension funds around the country. The earliest comprehensive Responsible Contracting policy put in place at a major pension fund appears to be the CalPERS policy (Attachment 1) adopted in June 1994. This policy was approved after an 18 month consulting study conducted by Pension Consulting Alliance/Kenneth Leventhal & Co. (PCA/KL). Minor revisions were made to the policy in August 1998.

A Responsible Contracting policy is a program implemented by a sponsor to assure that responsible contracting practices are carried out at assets under its control. A “Responsible Contractor” is commonly defined as an employer that pays a fair wage and benefit as compared to other similar jobs in their marketplace. This acknowledges that there are different labor practices depending on location and job type across the country. By way of example, CalPERS’ policy definition of “Responsible Contractor” is as follows:

*“A Responsible Contractor, as used in this Policy, is a contractor or subcontractor who pays workers a fair wage and a fair benefit as evidenced by payroll and employee records and who complies with service-disabled veteran business (SDV/BE) policy. “Fair benefits” are defined as including, but are not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a “fair wage” and “fair benefit” depends on the wages and benefits paid on comparable real estate projects, based upon local market factors, that include the nature of the project (e.g., residential or commercial; public or private), comparable job or trade classifications, and the scope and complexity of services provided.”*

Staff has researched the Responsible Contracting policies of the organizations we compete with for equity real estate investments. These competitors are primarily Real Estate Investment Trusts (REIT's), opportunity funds, private investors, and other pension funds. We have found that only pension funds have enacted these types of policies to date. Major pension funds, other than CalPERS, that have Responsible Contracting policies include: New York Common, the State Teachers Retirement System of Ohio, and the Colorado Public Employees' Retirement Association. We have attached Ohio's policy (Attachment 2), as New York's is very similar to CalPERS', and the Colorado policy (Attachment 3). There are other pension funds that have reviewed similar policies and declined to implement them and/or are currently in a review process. Staff will have additional information available at the Investment Committee meeting.

Staff seeks the Investment Committee's direction. If the committee decides to pursue a Responsible Contracting policy, staff will, with the assistance of our consultant, develop a recommended plan of action. A discussion of staffing requirements will be included as part of this review.

Policy No. RE 22

**FINAL**  
**California Public Employees' Retirement System**  
**Responsible Contractor Program Policy**  
**August 12, 1998**

*This policy shall be effective immediately upon adoption, and supersedes all previous Responsible Contractor policies.*

**I. INTRODUCTION**

The California Public Employees' Retirement System ("CalPERS" or "the System") has a deep interest in the condition of workers employed by the system and its advisors. The System, through the Responsible Contractor Program Policy ("Policy") described below, supports and encourages fair wages and fair benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence, both of which further require competitive returns on the System's real estate investments. The System endorses small business development, market competition, and control of operating costs. CalPERS supports many of the ideals espoused by labor unions and encourages participation by labor unions and their signatory contractors in the development and management of the System's real estate investments. The System believes that an adequately compensated and trained worker delivers a higher quality product and service. This Policy is intended to complement and in no manner detract from existing CalPERS policy regarding service-disabled California veteran owned business enterprises. The Policy is consistent with the recommendations of fiduciary counsel in a letter to the System's General Counsel dated December 7, 1992 and includes provisions for transition, monitoring, and enforcement.

**II. DEFINITION OF A RESPONSIBLE CONTRACTOR**

A Responsible Contractor, as used in this Policy, is a contractor or subcontractor who pays workers a fair wage and a fair benefit as evidenced by payroll and employee records and who complies with service-disabled veteran business (SDV/BE) policy. "Fair benefits" are defined as including, but are not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a "fair wage" and "fair benefit" depends on the wages and benefits paid on comparable real estate projects, based upon local market factors, that include the nature of the project (e.g., residential or commercial; public or private), comparable job or trade classifications, and the scope and complexity of services provided.

**III. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTING POLICY**

- A. Duty of Loyalty: Notwithstanding any other considerations, assets shall be managed for the exclusive benefit of the participants and the beneficiaries of CalPERS. CalPERS' as well as its advisors', duty to the participants and their beneficiaries shall take precedence over any other duty.

- B. Prudence: CalPERS' Board, staff and advisors are charged with the fiduciary duty to exercise the care, skill, prudence and diligence appropriate to the task.
- C. Competitive Return: To comply with duties of loyalty and prudence, all investments and services must be made and managed in a manner that produces a competitive risk-adjusted return.
- D. Competitive Bidding: Contractors and their subcontractors for construction, maintenance, and services shall be selected through a competitive bidding and selection process. The purpose of this provision is to encourage fair competition and to actively seek bids from all qualified sources within an area, particularly those identified as Responsible Contractors. Advisors and their subcontractors shall create a bidding process that includes notification and invitations to bid, distributed to a broad spectrum of potential bidders, particularly those identified as Responsible Contractors. The review of the bids shall include consideration of loyalty, prudence, and competitive risk-adjusted returns (factors to be considered include experience, reputation for honesty, integrity, timeliness, dependability, fees, SDV/BE policy, and the adherence to the Responsible Contracting Policy.)
- E. Local, state and national laws. All advisors and their subcontractors shall observe all local, state, and national laws (including by way of illustration those pertaining to insurance, withholding taxes, minimum wage, health and occupational safety), and CalPERS' policy with regard to service disabled California veteran business enterprises.

#### IV. SELECTION PREFERENCE OF A RESPONSIBLE CONTRACTOR

If Initial Requirements A through D (see Section III. above) are satisfied, CalPERS expresses a strong preference that Responsible Contractors be hired.

#### V. TRANSITION, ENFORCEMENT, MONITORING, AND ADMINISTRATION

- A. Applicable Investments and Phasing: This Policy shall apply to all applicable real estate advisors and single family real estate investments (and associated advisor and subcontractor contracts and bids arising out of those investments.) This policy specifically excludes all indirect, specialty, and mortgage investments that lack equity features and their respective advisors. The Policy shall not initially apply to existing investments such as hybrid debt or joint ventures. As to this Policy's application to existing and future hybrid debt and joint ventures investments, an implementation study will be performed to review these investments.

Housing Development Partnership existing on the effective date of this Policy will not be amended to incorporate this Policy, but voluntary compliance is strongly recommended. The practicality, schedule, and method of extending this Policy in the future, beyond those investments and

contracts described herein shall depend on factors that include the structure of the investment and the degree of control which CalPERS can exercise.

- B. Notification: CalPERS shall provide all applicable current and prospective real estate advisors with a copy of this Policy.
- C. Solicitation Documents: All requests for proposal and invitations to bid covered by this Policy shall include the terms of this Policy. Responses by bidders shall include information to assist the staff in evaluating a bid.
- D. Contracts and Renewals: All contracts entered into after the effective date of this Policy and pertaining to applicable real estate investments, including renewals of such contracts, shall include the terms of this Policy.
- E. Responsibilities: The responsibilities of CalPERS' staff, advisors, property managers, contractors, and unions are defined as follows:
  - 1. Staff: CalPERS staff shall have the following responsibilities:
    - a. Review the advisors' annual reports regarding compliance with the Policy.
    - b. Develop and maintain contact lists for all CalPERS' properties and provide a copy to inquiring parties.
    - c. Periodically report to the Investments Committee on these findings and make recommendations for corrective action as necessary. The first report will be six months after adoption of the Policy.
  - 2. Advisors: Advisors' responsibilities shall include:
    - a. Communicate the Policy to all property managers.
    - b. Review a contract listing for each property prepared by each property manager.
    - c. Maintain a simplified bid summary for each applicable contract. The summary should include identifying contract, successful bidder, and bidder's status as Responsible Contractor.
    - d. Provide annual report to CalPERS' staff, describing their own efforts as well as those by property managers and their subcontractors.
    - e. Monitor and enforce the Policy including investigation of potential violations.

3. Property Managers: Property managers will have responsibility for the following:

- a. Communicate in bid documents the Responsible Contractor Program Policy to contractors seeking to secure construction or building service contracts.
- b. Communicated the Policy to any interested party.
- c. Ensure there is a competitive bidding process which is inclusive of potentially eligible Responsible Contractors.
- d. Require bidders to provide to property manager a Responsible Contractor self certification on a form approved by CalPERS.
- e. Prepare and send to advisors a contract listing for applicable service contracts for each property under management. The building trades and service trades and other potential bidders will have access to this list.
- f. Provide advisors with a simplified bid summary for each contract.
- g. Provide property level annual report information to advisor.
- h. Maintain documentation for successful bidders.
- i. Seek from trade unions/service unions input in the development of Responsible Contractor lists.
- j. Maintain list of any interested Responsible Contractors. (Names, addresses and telephone numbers).

4. Contractors: Contractors will have the responsibility for the following:

- a. Submit to property manager a Responsible Contractor self-certification on a form approved by CalPERS.
- b. Communicate to subcontractors the Responsible Contractor Program Policy.
- c. Provide to property manager Responsible Contractor documentation.

5. Unions: Trade unions/service unions shall be asked to perform the following tasks;

- a. Deliver to the property manager or advisor lists of names and phone numbers of Responsible Contractors.
  - b. Refer interested and qualified Responsible Contractors to the property manager.
  - c. Continually monitor the local labor markets to update the lists.
  - d. Provide technical input as appropriate.
- F. Outreach: CalPERS' staff will develop and maintain a list of all CalPERS properties. The list will include the property name, address, advisor and property manager, and phone number of the property manager and real estate advisors. The CalPERS' staff will provide this list to anyone who requests a copy. Actual contract expiration inquiries will be referred to the property level. Property managers shall provide solicitation documents to any potential contractor who has, in writing, expressed an interest in bidding for the relevant contract.
- G. Minimum Contract Size: The Policy shall absolutely apply to all contracts of a minimum size of \$25,000. Minimum contract size refers to the total project value of the work being contracted for and not to any desegregation by trade or task. For example, a \$25,000 contract to paint two buildings in a single office complex would not be treated as two \$12,500 contracts, each less than the minimum contract size. Desegregation designed to evade the requirements of the Policy is not permitted.
- H. Applicable Expenditures Categories: The Policy shall apply to tenant improvements, capital expenditures, and operational service contracts (such as cleaning).
- I. SDV/BE Policy: Satisfaction of the CalPERS' SDV/BE Policy is a necessary condition before the System, acting through its contractors, hires a Responsible Contractor. Advisors and Contractors should provide a certification statement of SDV/BE compliance, or documentation of good faith efforts. Advisors shall collect and retain adequate data that document their compliance with this Policy and shall be prepared to produce this data for review by CalPERS' staff when requested.
- J. Fair Wage, Fair Benefits, Training: The Policy avoids a narrow definition of "fair wage", "fair benefits", and "training" that might not be practical in all markets. Furthermore, the Policy does not require a "prevailing wage", as defined by government surveys. Instead, the Policy looks to local practices with regard to type of trade and type of project. The Policy recognizes that practices and labor market conditions vary across the country and that flexibility in its implementation is very important.

In determining “fair wages” and “fair benefits” with regard to a specific contract in a specific market, items that may be considered include local wage practices, state laws, prevailing wages, labor market conditions, and other items.

In place of a prevailing wage standard, the Policy requires a broad outreach and competitive bidding program, as described in Section III.D, and V.F and L. This program is premised upon the availability of a list of Responsible Contractors in every market in which CalPERS directly owns a property. While advisors and their property managers and contractors are responsible for gathering and analyzing information relevant to identifying and hiring a Responsible Contractor, compilation of this list does not depend solely on the advisors, property managers, or contractor. This Policy instead invites the various local trades to suggest contractors which in their view qualify as Responsible Contractors. Sources of information include local building and service trade councils, builders association, and governments.

- K. Annual Review and Data Forms: A proposed Responsible Contracting annual report is included with this Policy. The annual review of Advisors’ compliance with the Policy will be coincident with the SDV/BE review, and Advisors shall present summary data in a format described approved by the System. The annual review of advisor compliance shall provide CalPERS’ staff with good faith evidence of monitoring and enforcement.

The annual review will seek to determine whether each advisor, property manager, and contractor conducted a good faith outreach program and a competitive bidding process that includes Responsible Contractors. If a potential Responsible contractor does not respond to the invitation to bid, then the advisor, property manager or contractor has acted properly. For each bidder, the advisor, property manager or contractor is obliged to gather appropriate Responsible Contracting information and make a judgment with regard to the five Initial Requirements described in Section III. If there are instances in which an advisor, property manager, or contractor has failed to comply with this Policy, CalPERS’ review of the advisors, property managers, or contractors will focus on the overall pattern of conduct and not any one specific incident.

- L. Competitive Bidding: Property managers and contractors should give notice for applicable bids in local trade publications, bulletin boards and union building trades councils. Property managers should seek input from building trades councils to develop lists of Responsible Contractors for inclusion in the bidding process.

Property managers may choose from the list of Responsible Contractors a reasonable number of contractors to be invited to bid. Given the time and expense required to solicit and evaluate bids, it is not essential that advisors, property managers, and contractors invite all potential bidders.



The property manager must ensure that there is a competitive bidding process which is inclusive of potentially eligible Responsible Contractors. Inclusion is not necessarily assured by large numbers of bidders. Care must be taken that bidders include potentially eligible Responsible Contractors.

Although the Policy does not require hiring union workers, the trade unions will be invited to (1) deliver to the property manager or advisor lists of names and phone numbers of Responsible Contractors including those Responsible Contractors who have expressed any interest in bidding, and (2) continually monitor the local markets to update the lists. Property managers shall maintain these lists supplied by the trade unions.

- M. Neutrality: CalPERS supports a position of neutrality in the event there is a legitimate attempt by a labor organization to organize workers employed in the construction, maintenance, operation, and services at a CalPERS owned property.

Resolution of any interjurisdictional trade disputes will be the responsibility of the trades and the various state and national building trades councils. This Policy does not call for any involvement by the advisors, property managers, or contractors in interjurisdictional trade disputes.

- N. Enforcement: This System will place a non-complying advisor or property manager on a probation watch list. If the advisor or property manager does not modify this pattern of conduct even after discussions with CalPERS' staff, the System will consider this pattern of conduct along with other information when it reviews the advisor or property manager contract for possible renewal. The key indicator is a pattern of conduct which is inconsistent with the provisions of the Policy.

Advisors, property managers, and contractors which have not hired Responsible Contractors in the past may still bid for contracts. However, after the award of such contracts the System will review compliance with the Policy.

CalPERS does not require that advisors, property managers or contractors use any particular system for compliance. However, from time to time, CalPERS' staff may disseminate information and suggestions regarding efficient ways to comply with this Policy.

The State Teachers Retirement System of Ohio

**Policy on Contractor Selection for Real Estate Investments**

Mr. Dorsey, moved, Mr. Chapman seconded, to adopt the following policy on contractor selection for real estate investments:

WHEREAS, the State Teachers Retirement Board is charged with the duty of diligently and prudently investing and administering the funds and property of the State Teachers Retirement System as trustees and fiduciaries in the sole interest of the participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable administrative expenses; and

WHEREAS, the Board has invested funds of the System in real estate assets in various locales throughout the United States; and

WHEREAS, the Board finds that value can be added to the real estate investments held by the System if essential services, construction and products are provided by adequately trained, experienced and motivated workers;

NOW, WHEREFORE, BE IT RESOLVED:

1. Subject always to the fiduciary duties of prudence, loyalty, diligence and pursuit of competitive returns, contract service providers hired by the System or persons and firms hired to manage real estate assets owned by the System shall carefully consider and evaluate the bids and proposals for the provision of services, construction and products to be provided for such assets through the application of efforts by adequately trained, experienced and motivated workers; and
2. Contract service providers shall be selected on an open and fair competitive basis; and
3. Contract service providers must operate in a commercially responsible manner, complying with applicable federal, state and local laws, regulations and ordinances, including those related to employment practices, working conditions, compensation and benefits, and fair labor standards; and
4. The System supports the development of a healthy and profitable business environment through the responsible management of funds, properties and workers in a safe, fair and fiscally sound manner.

**Proposed Resolution regarding  
Contract Services at PERA Properties**

**PERA affirms its continuing commitment to its standing practices with respect to real estate office properties in its direct investment portfolio.**

- 1 PERA will always honor its fiduciary duties of prudence, loyalty, and pursuit of a competitive return with respect to the funds it invests on behalf of its members, retirees, and beneficiaries.**
- 2 Contract services providers hired by PERA or by its investment managers must operate in a commercially responsible manner, complying with applicable federal, state, and local laws, regulations, and ordinances, including those relating to employment practices, working conditions, compensation and benefits, and fair labor standards.**
- 3 Contract services providers are to be selected by PERA or by its investment managers on an open and fair competitive basis.**
- 4 PERA supports the development of a healthy and profitable business environment through the responsible management of funds, properties, and workers in a safe, fair, and fiscally sound manner.**